IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.18918 of 2003

Between:

Surajbhan Agarwal, S/o. late Haricharan Agarwal, R/o. Uma Enclave, First Floor, Opp: Tarakarama Theatre, Kachiguda, Hyderabad.

...PETITIONER

AND

1. The Government of Andhra Pradesh, rep.by its Principal Secretary, Home (General A) Department, Secretariat Buildings, Hyderabad.
2. The Joint Collector, Nizamabad, Nizamabad District.
3. Ramesh agarwal, S/o.late Haricharanlal Agarwal, 58 years, Business, R/o.103, G.V.S.Towers, Lower Tankbund, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Certiorari calling for records in G.O.Rt.No.1174, Home (General-A), dated 25.8.2003 on the file of the 1st respondent and quash the same and further direct the 2nd respondent to renew/grant the B-Form Licence in the petitioner favour.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondents: GP FOR HOME

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.18918 OF 2003

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ORDER:

Heard Sri C.V.Mohan Reddy, the learned counsel appearing for the petitioner and the learned Government Pleader for Home appearing for the respondents 1 and 2 and of Sri M.S.Prasad, the learned counsel appearing for the third respondent.

The petitioner herein, who is an applicant seeking grant of B-Form Licence for running a theatre, filed this Writ Petition, *inter alia,* seeking a Writ of Certiorari challenging the orders of the first respondent in G.O.Rt.No.1174, Home (General A), dated 25.08.2003 rejecting his appeal against the orders of rejection passed by the second respondent dated 06.05.2003.

The case of the petitioner is that he filed an application for grant of B-form licence in his favour in respect of M/s Ramesh Talkies, Nizamabad whereby the second

respondent by proceedings dated 25.08.2003 replied to the effect that unless application form is sent by all the three co-owners, it cannot be issued in his favour. Therefore, the petitioner had filed another application on 16.04.2003 for fresh consideration of the same whereupon the third respondent herein appeared in the said proceedings and opposed to grant licence in favour of the petitioner on the ground that he is a co-owner and the licence cannot be granted unless all other co-owners agree. However, according to the petitioner, having regard to the fact that his possession as co-owner is lawful, licence can be granted. Considering the said objection, the second respondent rejected the application as per the orders dated 06.05.2003 mainly on the ground that the petitioner failed to show his title, ownership and also lawful possession. Aggrieved thereby, the petitioner filed appeal before the first respondent, *inter alia,* tracing the entire chequered events and ultimately claiming his right through the Award which was passed by the Arbitrators whereunder the said Theatre was allotted to him and therefore, he is entitled to continue to run the business. The said appeal after hearing both the sides was rejected by the impugned orders dated 25.08.2003. Challenging the same, the present Writ Petition is filed tracing his claim going back to the original owner of the Theatre who was Sri Haricharan Agarwal i.e., the father of the petitioner who had taken a loan from M/s Trivedhi Hiralal Maganlal & Company, Bombay by creating a charge over the Theatre and ultimately the said Theatre was brought to sale in the execution proceedings in pursuance of a decree passed by the High Court of Bombay in Summary Suit No.12 of 1955 wherein the very same Decree-holder was declared as auction purchaser. However, the Theatre was in fact originally leased

by Smt. Asharfi Devi, the wife of late Haricharan Das Agarwal in the year 1961 to one Ram Kumar Gupta for a period of 20 years under a registered document No.1236 of 1961, dated 12.07.1961. The said lease was renewed with effect from 01.08.1981 for a period of 20 years under a registered lease deed dated 10.07.1981. In the interregnum, the Theatre was purchased by M/s R.K.Enterprises, Bombay under an agreement of sale dated 23.07.1981 from M/s Trivedhi Hiralal Maganalal & Company and the tenancy of Ram Kumar Gupta was attorned to M/s R.K.Enterprises, Bombay. Later M/s R.K. Enterprises, Bombay in turn sold the theatre under an agreement of sale dated 15.05.1995 in favour of the appellant and other brothers who are other legal heirs of the original owner Hari Charandas Agarwal. The said purchase was made in the names of the three brothers as a joint family property and the tenancy of Ram Kumar Gupta was attorned once again in favour of the joint family. However, M/s R.K. Enterprises had executed a General Power of Attorney on 15.05.1995, which is still subsisting. Therefore, the auction purchaser having no subsisting interest in the property, the petitioner acquired the same. However, disputes arose between the petitioner and the other brothers ultimately the matter was referred to arbitration as per the memorandum of understanding dated 24.09.1998 and the General Power of Attorney was executed in favour of the Arbitrators on the same day. Ultimately, the Arbitrators, who are no other than the close relatives of the parties, passed the Award on 08.03.1999 distributing the various assets of the joint family amongst three brothers whereby the concerned Theatre namely Ramesh Talkies along with the appurtenant land was allotted to the petitioner. The said Award was acted upon. Though initially Ramesh

Agarwal was managing the Theatre on behalf of the joint family, subsequently possession was taken over as per document dated 09.04.1999 and since then the petitioner has been managing the Theatre. Even though the lease as stood with Ramkumar Gupta expired, the licence was renewed in his name up to 31.03.2003. In the meanwhile, the third respondent filed W.P.No.9727 of 2001 challenging the arbitration proceedings and the same was allowed though on erroneous grounds. It is stated that the petitioner was not a party to the said proceedings. Aggrieved thereby the petitioner had filed a Writ Appeal in W.A.No.651 of 2003 which was disposed of as per the orders dated 22.04.2003 wherein the judgment of the learned single Judge was suspended in so far as they relate to the validity of the Award. Smt. Susheela Devi filed another Writ Appeal in W.A.No.1973 of 2001 and obtained interim orders. Subsequently, the third respondent himself filed a suit in O.S.No.47 of 2001 on the file of the District Judge, Ranga Reddy District for partition of the *per se* properties and the same is still pending. It is stated that neither of the proceedings are maintainable in law especially in view of the arbitration and Conciliation Act, 1996. The petitioner had filed E.P.No.3 of 2003 on the file of the Chief Judge, City Civil Court, Hyderabad for execution of the Award. However, since the Writ Appeals were pending, the said E.P. was closed on 03.08.2003 and the petitioner stated that the said order is also not correct and taking steps to challenge the same. The third respondent filed another W.P.No.5133 of 2002 for a declaration that the B-Form licence cannot be transferred in the name of the petitioner or any other person. However, the said Writ Petition was dismissed with direction to the Licensing Authority to consider all these aspects and pass appropriate orders. As against the same, the third respondent filed Writ Appeal in W.A.No.1360 of 2002 wherein the

Division Bench of this Court permitted the petitioner to run the Theatre till the existing licence expires by 31.03.2003 subject to further orders in the appeal. Later on, the said appeal was ultimately dismissed as withdrawn. Having regard to the aforesaid facts, it is contended that the petitioner is in lawful possession and therefore, these aspects have not been properly considered by either of the parties and erroneously rejected the application.

Contesting the claim of the petitioner, either of the respondents had raised serious objections in regard to the entitlement of the petitioner for licence as applied for and especially having regard to the chequered litigation and pendency of the comprehensive suit for partition filed by the third respondent himself, the authorities rightly rejected the application.

Having considered the submissions made at length from all the three sides across the Bar and on perusal of the material, the only short question which arises for consideration is as to whether on the facts and circumstances of the case, the authorities i.e., respondents 2 and 1 were right in rejecting the petitioner's application seeking for B-Form licence ?

There is no dispute in regard to the chequered events and also the proceedings as arose between the parties and the existence of disputes amongst them. The petitioner's case squarely sought to be flown from the Award passed by the Arbitrators subsequent to reference thereof by the parties concerned and he claims that he is in lawful possession and others have no objection. Whereas the claim of the petitioner is contested by the third respondent. Admittedly, a comprehensive suit

filed by the third respondent is still pending disposal in O.S.No.47 of 2001 on the file of the District Judge, Ranga Reddy District. The Award passed by the Arbitrators was the subject matter of the Writ Petition, which was allowed ultimately and against which an appeal was filed. The Division Bench of this Court suspended the said findings and the same is still pending consideration. On a totality of circumstances and the various proceedings as arose between the parties, it amply makes clear that virtually every claim is under cloud and still not fortified into any enforceable right as such. Though an objection is sought to be raised on behalf of the petitioner to the effect that the proceedings as initiated by the third respondent are hit by the Arbitration and Conciliation Act. However, the petitioner has hopelessly failed to establish as to how the very Award in pursuance of which he claims possession was duly implemented and executed as per Law. Even the execution application filed by him was subsequently withdrawn having regard to the pendency of the said proceedings in this Court. There is no clear cut evidence to show that the possession of the petitioner is in pursuance of any order or Award nor any delivery being given effect to. Admittedly, the licence period already stood expired and still there are serious disputes pending between the parties who are no other than the co-owners themselves. Both the 2nd and 1st respondents have taken into consideration of all these aspects and have rightly held that the petitioner did not establish his possession, right and ownership in respect of the property and also the lawful possession. Even otherwise as evident from the record and as rightly observed by the authorities as long as there is no finality or a decision in respect of the rights held amongst all other co-owners, necessarily the authorities have insisted

for obtaining the consent from the other co-owners. Having regard to the aforesaid facts and circumstances and especially the long broad litigation as existing between the parties, which is still in force, it cannot be said that the petitioner's possession is lawful and is entitled for any such licence exclusively. As long as there is no due consent from all the co-owners and support there from or at least a final decision from the competent Court holding against them, B-form licence cannot be granted. In the circumstances, I do not find any merits in the contention urged on behalf of the petitioner. There are no merits in the Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

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B. PRAKASH RAO, J

19th April 2005.

Chvn.

ASSISTANT REGISTRAR

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SECTION OFFICCER.

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1. The Government of Andhra Pradesh, rep.by its Principal Secretary, Home (General A) Department, Secretariat Buildings, Hyderabad.
2. The Joint Collector, Nizamabad, Nizamabad District.
3. Two CCs to GP for Home, High Court Buildings, Hyderabad (OUT).
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